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Letter Ruling 85-40: Photoprocessing Equipment; Industrial Plant, Defined; Vendor Registration

March 20, 1985

You request a ruling regarding the application of the Massachusetts sales tax to sales of photographic processing equipment by _____ ("Company"). The Company's sole product is an automated photoprocessing laboratory, a set of machines that jointly process film and produce photographs at high speeds. The automated laboratories are sold to fast photoprocessing businesses and are designed so that operators with minimal training can run the equipment. You also inquire whether the Company will be required to register as a vendor in Massachusetts if the sales of the automated laboratories are not subject to sales tax.

1. Chapter 64H, Section 2 of the Massachusetts General Laws imposes a five percent sales tax on all retail sales of tangible personal property, unless otherwise exempted. Chapter 64H, Section 6(s) exempts from the sales tax "[s]ales of machinery, or replacement parts thereof, used directly and exclusively...in an industrial plant in the actual manufacture, conversion or processing of tangible personal property to be sold...."

An industrial plant is defined as "a factory at a fixed location primarily engaged in the manufacture, conversion or processing of tangible personal property to be sold in the regular course of business." (G.L. c. 64H, § 6(s)).

If a fast photoprocessing business is at a fixed location and if the fast photoprocessing business is primarily engaged in the conversion and processing of photographs or other tangible personal property the fast photoprocessing business is an "industrial plant." A fast photoprocessing business that is not at a fixed location or that does not primarily engage in the conversion and processing of tangible personal property is not an "industrial plant."

Machinery in an industrial plant that directly and exclusively converts or processes photographs to be sold is exempt from the sales tax under Section 6(s) of Chapter 64H. Machinery that is part of a continuous production process but that does not directly and exclusively convert or process the photographs is subject to sales tax.

Therefore, the Company's sales of component machinery of automated photoprocessing laboratories used in an industrial plant directly and exclusively in the actual conversion or processing of photographs to be sold are exempt from the sales tax. The Company's sales of component machinery of automated photoprocessing laboratories that are not used in an industrial plant directly and exclusively in the actual conversion or processing of photographs are subject to tax.

2. You also inquire whether the Company should register as a vendor if the Company's sales of automated photoprocessing laboratories are not subject to the sales tax.

A vendor is defined as any person selling tangible personal property the sales of which are taxable. (G.L. c. 64H, § 1(18)). No person may do business in Massachusetts as a vendor unless a registration has been issued to him for each place of business in accordance with the requirements of Chapter 62C, Section 67. (G.L. c. 64H, § 7).

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The Company intends to sell tangible personal property which may be subject to tax. Therefore, the Company should register as a vendor.

3. All of a vendor's gross receipts from the sales of tangible personal property are presumed to be from sales subject to sales tax until the contrary is established. (G.L. c. 64H, § 8(a)). Chapter 64H, Section 8(f) provides that

[i]f tangible personal property is purchased by a person who will use such property in a manner which exempts it from the tax imposed by this chapter, he may give an exempt use certificate to the vendor, certifying that the property being purchased will be so used. The certificate shall relieve the vendor from further liability for the tax.

Therefore, all of the Company's retail sales of automated photoprocessing laboratories are presumed to be taxable until the Company receives exempt use certificates from its purchasers.

Very truly yours,

/s/Ira A. Jackson

Ira A. Jackson

Commissioner of Revenue

IAJ:JES:mf

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